

**James Madison to Caleb Wallace, August 23, 1785.
Transcription: The Writings of James Madison,
ed. Gaillard Hunt. New York: G.P. Putnam's Sons,
1900-1910.**

TO CALEB WALLACE.¹ MAD. MSS.

¹ Several of Madison's friends in Kentucky wrote to him asking his assistance in the framing of a new government. January 6, 1785, George Muter transmitted questions which Caleb Wallace wished answered, which were the same as those answered above. In the MSS. this letter is not addressed, and is marked as having been sent to "John Brown, Kentucky," but Sept. 24, 1785, Caleb Wallace replied to it as a letter to him, which doubtless it was.— *Mad. MSS.*

Orange, Augt 23d, 1785.

Dr Sir, —Your favour of the 12th of July was safely delivered to me by Mr. Craig. I accept with pleasure your proposed exchange of Western for Eastern intelligence and though I am a stranger to parental ties can sufficiently conceive the happiness of which they are a source to congratulate you on your possession of two fine sons & a Daughter. I do not smile at the Idea of transplanting myself into your wilderness. Such a change of my abode is not indeed probable yet I have no Local partialities which can keep me from any place which promises the greatest real advantages, but if such a removal was not even possible I should nevertheless be ready to communicate as you desire my Ideas towards a constitution of Government for the State in embryo. I pass over the general policy of the measure which calls for such a provision. It has been unanimously embraced by those who being most interested in it must have best considered it, & will I dare say be with

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equal unanimity acceded to by the other party which is to be consulted. I will first offer some general remarks on the Subject, & then answer your several queries.

1. *The Legislative Department* ought by all means, as I think to include a Senate constituted on such principles as will give *wisdom* and *steadiness* to legislation. The want of these qualities is the grievance complained of in all our republics. The want of *fidelity* in the administration of power having been the grievance felt under most Governments, and by the American States themselves under the British Government, it was natural for them to give too exclusive an attention to this primary attribute. The Senate of Maryland with a few amendments is a good model. Trial has I am told verified the expectations from it. A Similar one made a part of our constitution as it was originally proposed but the inexperience & jealousy of our then Councils, rejected it in favor of our present Senate a worse could hardly have been substituted & yet, bad as it is, it is often a useful bit in the mouth of the house of Delegates. Not a single Session passes without instances of sudden resolutions by the latter of which they repent in time to intercede privately with the Senate for their Negative. For the other branch models enough may be found care ought however to be taken against its becoming too numerous, by fixing the number which it is never to exceed. The quorum, wages, and privileges of both branches ought also to be fixed. A majority seems to be the natural quorum. The wages of the members may be made payable for — years to come in the medium value of wheat for years preceding as the same shall from period to period be rated by a respectable Jury appointed for that purpose by the Supreme Court. The privileges of the members ought not in my opinion to extend beyond an exemption of their persons

and equipage from arrests during the time of their actual service. If it were possible it would be well to define the extent of the Legislative power but the nature of it seems in many respects to be indefinite. It is very practicable however to enumerate the essential exceptions. The Constitution may expressly restrain them from meddling with religion—from abolishing Juries—from taking away the Habeas corpus—from forcing a citizen to give evidence against himself—from controuling the press—from enacting retrospective laws

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at least in criminal cases, from abridging the right of suffrage, from taking private property for public use without paying its full Value from licensing the importation of Slaves, from infringing the confederation, &c &c.

As a further security against fluctuating & indigested laws the Constitution of New York has provided a Council of Revision. I approve much of such an institution & believe it is considered by the most intelligent citizens of that State as a valuable safeguard both to public interests & to private rights. Another provision has been suggested for preserving System in Legislative proceedings which to some may appear still better. It is that a standing committee composed of a few select & skilful individuals should be appointed to prepare bills on all subjects which they may judge proper to be submitted to the Legislature at their meetings & to draw bills for them during their Sessions. As an antidote both to the jealousy & danger of their acquiring an improper influence they might be made incapable of holding any other Office Legislative, Executive, or Judiciary. I like this Suggestion so much that I have had thoughts of proposing it to our Assembly, who give almost as many proofs as they pass laws of their need of some such Assistance.

2 The Executive Department. Though it claims the 2d place is not in my estimation entitled to it by its importance all the great powers which are properly executive being transferred to the fœderal Government. I have made up no final opinion whether the first Magistrate should be chosen by the Legislature or the people at large or whether the power should be vested in one man assisted by a council or in a council of which the President shall be only primus inter pares. There are examples of each in the U. States and probably advantages & disadvantages attending each. It is material I think that the number of members should be small & that their Salaries should be either unalterable by the Legislature or alterable only in such manner as will not affect any individual in place. Our Executive is the worst part of a bad Constitution. The Members of it are dependent on the Legislature not only for their wages but for their reputation and therefore are not likely to withstand usurpations of that branch; they are besides too numerous and expensive, their organization vague & perplexed & to crown the absurdity some of the members may

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without any new appointment continue in Office for life contrary to one of the Articles of the Declaration of Rights.

3d *The Judiciary Department* merits every care Its efficacy is Demonstrated in G. Brittain where it maintains private Right against all the corruptions of the two other departments & gives a reputation to the whole Government which it is not in itself entitled to. The main points to be attended to are 1. that the Judges should hold their places during good behavior 2. that their Salaries should be either fixed like the wages of the Representatives or not be alterable so as to affect the Individuals in office. 3 that their Salaries be liberal The first point is obvious; without the second the independence aimed at by the first will be ideal only; without the 3d the bar will be superior to the bench which destroys all security for a Systematick administration of Justice. after securing these essential points, I should think it unadvisable to descend so far into detail as to bar any future Modification of this department which experience may recommend An enumeration of the Principal courts with Power to the Legislature to Institute inferior Courts may suffice. The Admiralty business can never be extensive in your situation and may be referred to one of the other Courts. With regard to a Court of Chancery as distinct from a Court of Law, the reasons of Lord Bacon on the affirmative side outweigh in my Judgment those of Lord Kaimes on the other side. Yet I should think it best to leave this important question to be decided by future lights without tying the hands of the Legislature one way or the other. I consider our county courts as on a bad footing and would never myself consent to copy them into another constitution.

All the States seem to have seen the necessity of providing for Impeachments but none of them to have hit on an unexceptionable Tribunal. In some the trial is referred to the Senate in others to the Executive, in others to the Judiciary department it has been suggested that a tribunal composed of members from each Department would be better than either and I entirely concur in that opinion. I proceed next to your queries.

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1. "Whether is a representation according to numbers, "or property, or in a joint proportion to both, "the most Safe? or is a representation by counties "preferable to a more equitable mode that will be difficult "to adjust?" Under this question may be considered 1. the right of Suffrage. 2 the mode of suffrage. 3 the Plan of representation As to the 1. I think the extent which ought to be given to this right a matter of great delicacy and of critical importance. To restrain it to the land holders will in time exclude too great a proportion of citizens; to extend it to all citizens without regard to property, or even to all who possess a pittance may throw too much power into hands which will either abuse it themselves or sell it to the rich who will abuse it. I have thought it might be a good middle course to narrow this right in the choice of the least popular, & to enlarge it in that of the more popular branch of the Legislature. There is an example of this Distinction in N. Carolina if in none

of the States. How it operates or is relished by the people I cannot say. It would not be surprising if in the outset at least it should offend the sense of equality which reigns in a free Country. In a general view I see no reason why the rights of property which chiefly bears the burden of Government & is so much an object of Legislation should not be respected as well as personal rights in the choice of Rulers. It must be owned indeed that property will give influence to the holder though it should give him no legal privileges and will in general be safe on that as well as on other Accounts especially if the business of legislation be guarded with the provisions hinted at 2 As to the mode of suffrage I lean strongly to that of the ballot, notwithstanding the objections which lie against it It appears to me to be the only radical cure for those arts of Electioneering which poison the very fountain of Liberty The States in which the Ballott has been the Standing mode are the only instances in which elections are tolerably chaste and those arts in disgrace. If it should be thought improper to fix this mode by the constitution I should think it at least necessary to avoid any constitutional bar to a future adoption of it¹

1 The Constitution of N. York directs an experiment on this Subject. [Note in *MS.*]

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3 By the Plan of representation I mean 1. the classing of the Electors 2 the proportioning of the representatives to each class. The first cannot be otherwise done than by geographical description as by Counties. The second may easily be done in the first instance either by comprising within each county an equal number of electors; or by proportioning the number of representatives of each county to its number of electors The difficulty arises from the disproportionate increase of electors in different Counties. There seem to be two methods only by which the representation can be equalized from time to time. The 1 is to change the bounds of the counties; the 2d. to change the number of representatives allotted to them respectively, as the former would not only be most troublesome & expensive but would involve a variety of other adjustments the latter method is evidently the best. Examples of a Constitutional provision for it exists in several of the States. In some it is to be executed periodically in others, *pro re nata*. The latter seems most accurate and very practicable I have already intimated the propriety of fixing the number of representatives, which ought never to be exceeded I should suppose 150 or even 100, might safely be made the *ne plus ultra* for Kentucky

2. "Which is to be preferred an Annual, Triennial, "or Septennial Succession to Offices or frequent "elections without limitations in choice or that officers "when chosen should continue *quamdiu se bene "gesserint*?" The rule ought no doubt to be different in the different Departments of power. For one part of the Legislature Annual Elections will I suppose be held indispensably though some of the ablest Statesmen & soundest Republicans in the U. States are in favor of triennial. The great Danger in departing from annual elections in this case lies in the want of some other natural term to limit the departure. For the other branch 4 or 5 years may be the period. For neither branch does it seem necessary or proper to prohibit an indefinite re-eligibility. With regard to the Executive if the elections be frequent & particularly if made as to any member of it by the people at large a re-eligibility cannot I think be objected to, if they be unfrequent, a temporary or perpetual incapacitation according to the degree of unfrequency at least in the case of the first Magistrate may not be amiss. As to the Judiciary department enough

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has been said & as to the Subordinate officers civil & Military nothing need be said more than that a regulation of their appointments may under a few restrictions be safely trusted to the Legislature.

3 “How far may the same person with propriety “be employed in the different departments of “Government in an infant country where the counsel of “every individual may be needed?” Temporary deviations from fundamental principles are always more or less dangerous. When the first pretext fails, those who become interested in prolonging the evil will rarely be at a loss for other pretexts. The first precedent too familiarises the people to the irregularity, lessens their veneration for those fundamental principles, & makes them a more easy prey to ambition & self Interest. Hence it is that abuses of every kind when once established have been so often found to perpetuate themselves. In this caution I refer chiefly to an improper mixture of the three great Departments within the State. A Delegation to Congress is I conceive compatible with either.

4 “Should there be a periodical review of the Constitution?” Nothing appears more eligible in theory nor has sufficient trial perhaps been yet made to condemn it in practice. Pennsylvania has alone adopted the expedient. Her citizens are much divided on the subject of their Constitution in general & probably on this part of it

in particular. I am inclined to think though am far from being certain, that it is not a favorite part even with those who are fondest of their Constitution. another plan has been thought of which might perhaps Succeed better and would at the same time be a safeguard to the equilibrium of the constituent Departments of Government. This is that a Majority of any two of the three departments should have authority to call a plenipotentiary convention whenever they may think their constitutional powers have been Violated by the other Department or that any material part of the Constitution needs amendment In your situation I should think it both imprudent & indecent not to leave a door open for at least one revision of your first Establishment, imprudent because you have neither the same resources for supporting nor the same lights for framing a good establishment now as you

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will have 15 or 20 Years hence, indecent because an handful of early settlers ought not to preclude a populous Country from a choice of the Government under which they & their posterity are to live. Should your first Constitution be made thus temporary the objections against an intermediate union of offices will be proportionably lessened. Should a revision of it not be made thus necessary & certain there will be little probability of its being ever revised. Faulty as our Constitution is as well with regard to the Authority which formed it as to the manner in which it is formed the Issue of an experiment has taught us the difficulty of amending it: & although the issue might have proceeded from the unseasonableness of the time yet it may be questioned whether at any future time the greater depth to which it will have stricken its roots will not counterbalance any more auspicious circumstances for overturning it.

5 & 6 “Or will it be better, unalterably to fix “some leading Principles in Government and make “it consistant for the Legislature to introduce such “changes in lesser matters as may become “expedient? can censors be provided that will impartially “point out deficiencies in the Constitution & the “Violations that may happen”

Answers on these points may be gathered from what has been already said.

I have been led to offer my sentiments in this loose form rather than to attempt a delineation of such a Plan of government as would please myself not only by my Ignorance of many local circumstances & opinions which must be consulted in such a work but also by the want of sufficient time for it. At the receipt of your letter I had other employment and what I now write is in the midst of preparations for a Journey of business which will carry me as far as Philadelphia at least & on which I shall set out in a day or two.

I am sorry that it is not in my power to give you some satisfactory information concerning the Mississippi. A Minister from Spain has been with Congress for some time & is authorised as I understand to treat on whatever subjects may concern the two nations. If any explanations or propositions have passed between him & the Minister of Congress,

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they are as yet in the list of Cabinet Secrets. as soon as any such shall be made Public & come to my knowledge, I shall take the first opportunity of transmitting them. Wishing you & your family all happiness,

I am, Dr Sir, Your friend & servant.

The Constitutions of the several States were printed in a small Volume a year or two ago by order of Congress a perusal of them need not be recommended to you. Having but a single copy I cannot supply you It is not improbable that you may be already possessed of one. The revision of our laws by Jefferson, Wythe & Pendleton beside their Value in improving the legal code may suggest something worthy of being attended to in framing a Constitution.